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No. 212

In the Supreme Court of the United States

OCTOBER TERM, 1950

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

M. VICTOR LEVENTRITT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The Solicitor General, on behalf of the Securities and Exchange Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit entered on February 1, 1950, reversing part of an order, dated November 4, 1949, of the United States District Court for the Northern District of New York. The order of the district court approved and enforced amended plans of reorganization pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935, 49 Stat. 803 (15

U. S. C. § 79k (e)), with respect to Niagara Hudson Power Corporation and subsidiaries, which plans had previously been approved by the Commission.

OPINIONS BELOW

The amended opinion of the Court of Appeals (R. 122-126, 128) is reported in 179 F. 2d 615. The opinion of the district court (R. 107-112) is reported in 86 F. Supp. 697. The findings and opinion of the Commission, dated August 16, 1949, and its order dated August 25, 1949, have not yet been officially reported but are set forth in the Commission's Holding Company Act Release Nos. 9270, 9295 (R. 48-95, 103-104).

JURISDICTION

The judgment of the Court of Appeals was entered on February 1, 1950 (R. 128), and was amended by order of February 14, 1950 (R. 128-129). Petitions for rehearing were denied by the Court of Appeals on February 23, 1950, one judge dissenting (R. 151). On May 18, 1950, Mr. Justice Jackson extended the time within which this petition might be filed to and including July 22, 1950 (R. 153).[1] The jurisdiction of this Court is invoked under 28 U. S. C. 1254, made applicable by Section 25 of the Public Utility Holding Company Act of 1935 (15 U. S. C. 79y).

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[1] The application for extension was made in view of the pendency of a similar case in the Court of Appeals for the Third Circuit. *In the Matter of Commonwealth & Southern Corp.*, No. 10045. No decision in that case has yet been rendered.

STATUTE INVOLVED

Section 11(e) of the Public Utility Holding Company Act of 1935 provides in pertinent part as follows:

> (e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. * * *

QUESTION PRESENTED

Where warrants represent no interest other than an unexercised option to buy stock of a holding

company at a price, found by the Commission on ample evidence to be substantially in excess of the present value of the stock, or of any future value that might rationally be forecast, does the "fair and equitable" standard of Section 11(e) of the Holding Company Act require, as a matter of law, that the holders of such warrants participate in the assets of the company on reorganization, merely because such warrants have been, and might in the future be, traded in the market at some value in excess of zero if the Act did not require termination of the option privilege?

STATEMENT

This case involves one of two plans filed under Section 11(e) of the Public Utility Holding Company Act of 1935 by Niagara Hudson Power Corporation, a registered holding company under the Act. This plan contemplates dissolution of Niagara Hudson. One of the issues before the Commission and the district court, and the principal question dealt with by the opinion of the Court of Appeals, was whether, under the "fair and equitable" standard of Section 11(e), any participation should be accorded to the class B stock option warrants of Niagara Hudson. Aspects of the dissolution not concerned with the warrants are not the subject of controversy.

When the Section 11(e) proceedings were instituted, Niagara Hudson had outstanding the following securities: (1) notes payable to banks in the

amount of $20,000,000; (2) first and second preferred stocks, $100 par value, in the amount of 378,875 and 105,930 shares respectively; (3) 9,580,988½ shares of common stock, $1 par value; (4) class B stock option warrants. These warrants represent options to purchase at any time 497,191-3/6 shares of common stock, each warrant entitling the holder thereof to subscribe to 1-1/6 shares of common stock upon payment of $50, or at the rate of $42.86 per share (R. 52).

Both plans were filed by Niagara Hudson under Section 11(e) for the purpose of complying with the provisions of Section 11(b)(2) 48 Stat. 821 (15 U. S. C. 79k(b)(2)), and the Commission's order and requirements thereunder (R. 54, 58-59).[2] One of the plans, since consummated and not challenged on appeal to the court below, provided for the consolidation into one operating company of Niagara Hudson's three principal operating subsidiaries, all of whose common stocks were owned by Niagara Hudson. This new operating company would issue all of its common stock to Niagara Hudson, while preferred stock would be issued to the preferred stockholders of the constituent companies on a share for share basis and bearing the same dividend rates. The second plan, operative only upon consummation of the first, provided for

[2] *Niagara Hudson Power Corporation*, Holding Company Act Release No. 5155 (1944); *Niagara Hudson Power Corporation*, Holding Company Act Release Nos. 6083, 6108 (1945), affirmed, *Phillips* v. *SEC*, 156 F. 2d 606 (C. A. 2).

the disposition by Niagara Hudson of its common stock interest in the new operating company by exchanging the same for its preferred and common stocks, the transfer of Niagara Hudson's relatively small and miscellaneous assets to the new operating company, and for the subsequent dissolution of Niagara Hudson. No provision was included for participation by the holders of the class B stock option warrants. (R. 54-56.)

In order to effectuate the foregoing exchange, the common stock of the new operating company, issued to Niagara Hudson for its interest in the constituent companies, was reclassified pursuant to the plan into 1,939,220 shares of class A stock and 7,473,172 shares of common stock. The class A stock, having the same voting rights as the common stock but preferred as to dividends of $1.20 per share and subject to specified conversion, redemption and other rights, has been used for the purpose of retiring Niagara Hudson's preferred stocks. The common stock of the new operating company was to be distributed to the common stockholders of Niagara Hudson on the basis of 0.78 shares of common stock for one share of Niagara Hudson common stock plus a graduated cash payment per share to pay off the bank loans. (R. 55-56, 99-100.)[3]

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[3] Under the terms of the bank loan agreement, payment of dividends on the common stock of Niagara Hudson was prohibited so long as any part of the loans was outstanding. Under the plan, common stockholders of Niagara Hudson who

The Commission approved the plan by order, dated August 25, 1949 (R. 103-104). On application of the Commission and after hearing as prescribed in Section 11(e), the United States District Court for the Northern District of New York approved and enforced the plan by order dated November 4, 1949 (R. 1-104, 113-119). Respondent, as owner of 8,000 of the class B stock option warrants, appealed to the court below complaining of the failure to make any provision for the warrant holders. The Commission and the district court had held the plan necessary and appropriate to comply with Section 11(b) in providing for the liquidation of Niagara Hudson and in its consequent termination of the warrant holders' options. The court below agreed that "in the discharge of [its] duty the Commission was free to eliminate such securities as these" (R. 123). But the order of the district court was reversed and the case remanded on the ground that the Commission and the district court had erred in holding that it was "fair and equitable" to deny the warrant holders a participation in the assets of Niagara Hudson.

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wish to exchange their stock for the common stock of the new operating company following January 5, 1950, the effective date of the plan, and to receive dividends thereon immediately, are required to pay in cash their proportionate share of the bank loans. If no cash is tendered, Niagara Hudson is to retain the common stock of the new operating company and use the dividends thereon for the purpose of retiring the bank loans. When the bank loans are paid in full, the new common stock will be distributed to the common stockholders of Niagara Hudson without any cash payment (R. 56, 101).

The Commission's conclusion that the warrant holders were not entitled to participate in the assets was based upon an estimate that if Niagara Hudson were to continue as a going enterprise, the system's consolidated net income reasonably might be expected to average about $15,750,000 per year. After deducting dividend requirements of $2,424,000 on Niagara Hudson's preferred stock, this would leave a net income of $13,326,000 applicable to the common stock of Niagara Hudson, or $1.39 per share on the 9,580,988 shares of Niagara Hudson's common stock. On a liberal estimate of a value for the common stock of Niagara Hudson at 15 times consolidated earnings, it would require earnings of $2.86 per share, or an increase of about 106% over the Commission's forecast of foreseeable earnings, to make the value of this stock approximate the exercise price of $42.86 per share, payment of which the warrant holder was required to make before he would become a stockholder entitled, as such, to participate in the earnings or assets of the enterprise. The Commission concluded that any possibility of such increment beyond its estimate of foreseeable earnings was too remote and speculative and that, accordingly, the warrants had no measurable investment value. The warrant holders were, therefore, allowed no participation in the Section 11(e) reorganization of the Niagara Hudson system. (R. 63-71, 81-82.) The district court, in reviewing the Commission's

findings, reached the same conclusion (R. 112, 116). See also 86 F. Supp. 697, 701.

The court below accepted the Commission's earnings forecast. It agreed that such forecast indicated a value for the common stock equal to about one-third of the exercise price of the warrants. But, it reasoned that a value for the warrants results from "a willingness to pay cash for the chance that the market's judgment as to the future of the property may prove too unfavorable", that, it must be supposed, Congress did not intend to withdraw recognition for such warrants in Holding Company Act reorganizations, that *"Otis* v. *SEC*, 323 U. S. 624, appears to us to have recognized property whose value was quite as speculative as this", and that the market history, including the fact that the warrants sold at more than nominal prices when the stock of Niagara Hudson was quoted at about its current value, showed that the warrants had, as of the date of the plan, some positive value (R. 122-126). It accordingly reversed the order of the district court insofar as it had enforced and affirmed the dissolution plan for Niagara Hudson without allowing any participation to the warrant holders (R. 126, 128-129). With respect to this decision, Judge Clark concurred in the result. He indicated that while there was persuasive evidence in the record to support the Commission's findings, he was disposed in favor of a remand so that the Commission might

consider "the market quotations, now deemed so important" (R. 126-127).

On February 15, 1950, the Commission filed a petition for rehearing, in which petition Niagara Hudson joined. In this petition the Commission, *inter alia,* urged that, in the face of the undisputed earnings forecast, market quotations could not be regarded as a proper guide for determining the investment value of the warrants and, further, that in disallowing any participation for the warrants the Commission was fully aware, as the record shows, of the market history of the warrants. (R. 130-150). On February 23, 1950, the court below denied the petition for rehearing. Judge Clark, who had previously concurred, dissented and voted to grant rehearing (R. 151).

REASONS FOR GRANTING THE WRIT

This case involves an issue of substantial importance in the administration of the Public Utility Holding Company Act. Perpetual warrants to buy the junior stocks of holding companies at prices having no fair relation to the underlying investment in subsidiary company properties, or to the earning capacity thereof, exemplified that irresponsible optimism in connection with the promotion of holding companies which the Congress included in its recital of evils to be eliminated by the Act.[4] Such option warrants have

[4] Section 1(b)(1) of the Act, 49 Stat. 803 (11 U.S.C. 79a(b)(1)) expressly declares that one of the evils which the Act intended to eliminate stemmed from the fact that securities

already been dealt with in a number of prior Holding Company Act reorganizations, but remain to be dealt with in connection with several of the major holding company systems.[5] The decision below requires the Commission to value option warrants upon a basis which marks a radical departure in the interpretation of the fair and equitable standard of Section 11(e), and accordingly has implications far beyond the cases which directly concern option warrants. By this decision, the Commission is required to take value from senior security-holders for the benefit of a junior interest on the basis of criteria as elusive and speculative as that irrational optimism which the Congress considered should no longer be permitted as a predicate for even voluntary transactions in holding company securities. In addition, because

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have been "issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and * * * in anticipation of excessive revenues from subsidiary public-utility companies."

[5] Warrant holders have been denied participation under Section 11(e) of the Act in the reorganization of *American & Foreign Power Co.*, Holding Company Act Release Nos. 7815, 7849 (1947), enforced and affirmed, 80 F. Supp. 514 (D. Me.). This plan was subsequently withdrawn because changed circumstances had made the plan unfeasible, and a new plan is now pending before the Commission. There is also pending before the Commission a Section 11(e) plan for the reorganization of The United Corporation which has outstanding perpetual warrants. Holders of perpetual warrants have also been excluded from participation in the reorganization of Commonwealth & Southern Corporation. See *In re Commonwealth & Southern Corp.*, 84 F. Supp. 809 (D. Del.) (appeal pending).

For cases in which warrant holders have been allowed participation, see note 11 *infra*, p. 17.

of the lack of any detailed explication of the new valuation technique which the Commission is required to follow on remand, the decision below poses grave administrative difficulties including uncertainty as to how the Commission can value options and similar securities with a reasonable prospect of being upheld on appeal and thus permit completion, without interminable delay, of the task of holding-company simplification. The court below relied on this Court's decision in the case of *Otis & Co.* v. *SEC,* 323 U. S. 624, and in so doing, we believe, misconstrued that decision in a manner which requires correction by this Court.

1. By the terms of their contract, the warrant holders were not entitled to share in the assets of the company except by becoming stockholders through payment of the option price.[6] The warrant holders' claim to participate in the assets at the expense of stockholders could be supported under the decisions of this Court only upon the theory that the Act's frustration of their executory contract would otherwise take something of

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[6] Under the terms of his contract, the warrant holder "is entitled to purchase at any time (without limit)" common stock of Niagara Hudson at the rate of $42.86 per share, and "to receive a certificate for the shares of Common Stock so purchased upon presentation and surrender of his Class B Option Warrant duly endorsed and upon payment of the purchase price * * *. This Class B Option Warrant does not entitle the holder thereof to any rights whatsoever as a stockholder of the Corporation." (R. 143, 145.)

measurable value from the warrant holders resulting in an unfair "windfall" to the stockholders. See *New York Trust Co.* v. *SEC,* 131 F. 2d 274 (C.A. 2), certiorari denied, 318 U. S. 786, discussed in *SEC* v. *Central-Illinois Securities Corp.,* 338 U.S. 96, 136-139. To give the warrant holders more than their contract rights without proof of an equivalence between what is accorded and the right surrendered or terminated by the plan contravenes the rule of strict priority, which is basic to the "fair and equitable" standard. See *Case* v. *Los Angeles Lumber Products Co.,* 308 U.S. 106, 115-119; *Otis & Co.* v. *SEC,* 323 U.S. 624, 634; *SEC* v. *Central-Illinois Securities Corp.,* 338 U.S. 96, 130.

The Commission's finding of no value for the warrants necessarily was a negative finding, stating, "We cannot find that there is a reasonable expectation that the market price of Niagara Hudson's common stock would exceed the exercise price of the option warrants within the foreseeable future" (R. 82). The court below does not hold that the record required, or would even support, a contrary finding by the Commission.[7] Nor does the opinion below question the Commission's conclusion that the present and prospective value of the common stock was far below the exercise

[7] Respondent, appellant below, did not bring the administrative record to the court below but relied merely on the findings of the Commission and of the district court.

price of the warrants or the adequacy of the voluminous valuation data in the record to support the Commission's earnings forecast which was a step to that conclusion.[8] Indeed, the court below itself accepted the Commission's earnings forecast and deduced therefrom a present value for the old common stock equal to only about one-third of the exercise price of the warrants. (R. 124). Nevertheless it concluded that "we cannot agree that there was any evidence 'substantial' or insubstantial to support the finding that these 'warrants' were wholly worthless" (R. 126). This conclusion appears to us to rest upon nothing more than the inherent uncertainty of any valuation, and the consequent impossibility of proving that the common stock of Niagara Hudson could not for *unforeseeable* reasons acquire a future value several times as high as the amount accepted as its present and prospective value. We believe that to compensate junior security holders at the expense of senior security holders because of nothing more than the

[8] As Judge Clark notes, the majority opinion "does not mention the strong case the Commission builds to show that, except for a gambler's chance in the market, the warrants will never produce results from the holders" (R. 126). The remoteness of the possibility that future income would greatly exceed the Commission's forecast is underlined by the circumstance that the level of operating earnings represented by the Commission's forecast was sufficient to yield the relatively high rate of return of approximately 6.53 per cent upon what the record indicated to be the approximate rate base (R. 70). There is evidence that the New York Commission would be likely to insist upon rate reductions in the near future (R. 71).

impossibility of proving that a rational forecast is infallible, is just as much an invasion of the rule of strict priority as to countenance a payment for the purpose of merely stifling opposition or to recognize the type of "colloquial equity" rejected by this Court in the *Engineers* case (*SEC* v. *Central-Illinois Securities Corp.*, 338 U.S. 96, 151-152). We submit that, just as in bankruptcy reorganization,[9] under the "fair and equitable" standard of Section 11(e), reasonably prospective earnings constitute the primary criterion for the purpose of determining the value of any class of securities with respect to which the right to participate in the proposed reorganization is asserted.[10] It is immaterial whether the interest asserted represents debt, preferred or common stock, or option warrants.

2. The opinion below rests upon what we believe to be a misinterpretation of this Court's decision on *Otis & Co.* v. *SEC*, 323 U. S. 624, requiring correction by this Court. The opinion states that in the *Otis* case the common stock "had no 'equity' over the preferred shares at the existing values of

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[9] *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510, 525-526; *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 318 U. S. 523, 540-542; *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448, 483.

[10] *SEC* v. *Central-Illinois Securities Corp.*, 338 U. S. 96, 130; *Otis & Co.* v. *SEC*, 323 U. S. 624, 631-632; *Lahti* v. *New England Power Association*, 160 F. 2d 845 (C. A. 1); *In re Community Gas & Power Co.*, 168 F. 2d 740 (C.A. 3), certiorari denied, 334 U. S. 846; *In re Electric Power & Light Corp.*, 176 F. 2d 687 (C. A. 2).

the assets" and "That necessarily involved a holding that, although the estimate of 'foreseeable' earnings did not justify a conclusion that they would ever leave a margin over the preferred dividends, the chance that there might be a margin was not to be denied the common stock" (R. 125). We believe this interpretation of the *Otis* case to be erroneous. In that case, this Court sustained the action of the Commission in granting a 5.48% participation in the assets of a holding company to common stockholders who had no present right to earnings because of large preferred dividend arrearages. Such participation was upheld because, upon the Commission's estimate of earnings, it appeared that, in the absence of reorganization, arrearages on preferred stock would be paid off in 15 years and the common stock would then acquire a right to a substantial share in the earnings of the enterprise. The earnings forecast made by the Commission, while liberal, coincided with the average system earnings for the prior six years, after controversial adjustments for certain items regarded as non-recurrent, and the earnings for the last 12-month period then available, without any such adjustment, actually exceeded the Commission's forecast. See *United Light & Power Co.*, Holding Company Act Release No. 4215, at page 17. Thus the forecast, although disputable, was not a wholly arbitrary one. The major controversy upon which both this Court and the Com-

mission divided was whether the preferred stockholders' liquidation preference including arrears should be valued merely on the basis of its going concern value rather than as a matured claim. Once this issue was resolved in favor of the common stockholders, it was a matter of mathematical computation to conclude from the Commission's earnings forecast that the common stockholders had a real interest in the going concern, although of course there was a risk factor which the Commission took into account in determining whether approximately 5% of the company's assets was the equitable equivalent of the interest surrendered.

We do not question that the doctrine of the *Otis* case is applicable to defining the rights of holders of unexercised option warrants to receive upon the liquidation or reorganization of a holding company the "equitable equivalent" of their interests in the going concern.[11] Here, however, the Com-

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[11] The court below noted prior decisions of the Commission which had permitted option holders to participate where the exercise price of the warrants was close to the Commission's estimate of present value for the stock subject to option and where the participation was based not on a forecast that the common stock would rise in value sufficient to make the option worth exercising but rather upon a recognition that since valuation is not an exact science there was a possibility not utterly remote of the stock reaching the exercise price (R. 124). See, for example, *In re Electric Power & Light Corp.*, 176 F. 2d 687, 691 (C. A. 2); *Community Gas & Power Co.*, Holding Company Act Release No. 6436, pages 29-30 (1946).

On the other hand, the Commission has consistently denied participation to holders of junior securities, including option warrants, where the possibility of the security ever having a value if the enterprise had continued without reorganization seems utterly remote. See, for example, *In re Standard Gas*

mission has concluded as a matter of fact that the Niagara Hudson warrant holders did not have any measurable interest in the going concern, and, unlike the situation in the *Otis* case, there was here no starting point in foreseeable earnings to support a forecast that the warrant holders could ever have a valuable interest in the going concern. While the legislative history reviewed in the *Otis* case indicates an intention on the part of the Congress that in the administration of Section 11 the Commission should recognize all legitimate investment values, there was no intention of requiring recognition of wholly irrational or conjectural values based upon nothing more than the speculators' appraisal of remote contingencies. See *Otis & Co.* v. *SEC*, 323 U. S. 624, 636.

3. The opinion below rests heavily upon the market history of the warrants, which history the court below regarded as conclusively establishing some value in excess of zero in the face of all contrary indications from analysis of the company's earnings prospects. The court below does not deduce a value for the warrants from market quotations as of any particular date and notes the wide

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& *Electric Co.*, 59 F. Supp. 274 (D. Del.) reversed on other grounds, 151 F. 2d 326 (C. A. 3), certiorari denied, 327 U. S. 796; *In re Central States Power & Light Corp.*, 74 F. Supp. 360 (D. Del.); *In re United Gas Corp.*, 58 F. Supp. 501, 519 (D. Del.); *In re Commonwealth & Southern Corp.*, 84 F. Supp. 809, 811 (D. Del.) (appeal pending).

variation in quotations.[12] To the court below, it was not important that the warrants varied in price or that there was a substantial variation from time to time in the relationship between the price of the warrants and the common stock. "What was important was that at no time did the 'warrants' become worthless, not even when the shares had gone down to their low of seven-eighths." (R. 123). While the opinion below expressly disclaims any intention of suggesting what value the Commission should ascribe to the warrants, we infer that the court below expects the Commission on remand to deduce from the market history of the warrants a conclusion as to the price at which the warrants might sell if there were no requirement for reorganization and that the warrant holders' participation be based on a value intermediate between that price and the zero value indicated by the Commission's earnings analysis.

Apart from the difficulty of appraising how the market would value the warrants in the absence of the Act's requirement for reorganization, we believe that it is a departure from all reorganization precedent to require an agency with statutory re-

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[12] The quotations ranged from a high of 9⅜ in 1932 to a low of 1/32 in 1942. For the single year 1929, the range was from 70½ to 6, a variation of about 1100% between the high and the low. Quotations for the common stock of Niagara Hudson also varied widely, although the variation between high and low was not as great as in the case of the warrants (R. 90).

sponsibility for a "fair and equitable" reorganization to disregard its own best judgment and to accept in lieu thereof market quotations as the determinant of value. It seems to us that, where the most careful study of the company's earnings prospects fails to establish any rational basis to support a value for the warrants, there is no reason for attributing superior insight to those who bought the warrants over the years prior to the pending reorganization. To the extent that the market forecast is in no sense supported by estimated foreseeable earnings, such putative market judgments "reflect merely vague hopes or possibilities," and otherwise valueless junior interests cannot be permitted "to perpetuate their position in an enterprise on such ephemeral grounds." *Case* v. *Los Angeles Products Co.,* 308 U. S. 106, 123. Precisely the same considerations apply where the warrant holder is not receiving a comparable new investment in the reorganized enterprise but is claiming a cash equivalent of the warrant he is surrendering. See *SEC* v. *Central-Illinois Securities Corp.,* 338 U. S. 96, 143.

Moreover, insofar as past market transactions reflect anything more than most blind gambles, they necessarily represent mere traders' expectations of profit based on anticipated short-term market trends for the warrants, and, as such, market quotations are not even opinion evidence as to intrinsic

value.[13] Indeed, even with respect to a security of unquestioned intrinsic value, and under a plan which by its nature requires valuation with reference to market conditions, it would be the duty of the Commission to disregard "abnormal or highly speculative market values of a transient nature." *SEC* v. *Central-Illinois Securities Corp.*, 338 U. S. 96, 146. Where, as in this case, all the evidence in the record points to an absence of intrinsic value for a security, any inference that it might have a speculative market value is irrelevant. Recognition of such speculative considerations necessarily involves such a complete abandonment of traditional valuation techniques based upon earnings forecasts, as to call for corrective action by this Court.

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[13] As the opinion below notes, when the market price for the common stock rises the market price for the warrants also rises but at a proportionately higher rate. While, of course, market declines for the common stock are accompanied by correspondingly greater declines for the warrants, making it more risky to speculate in warrants than in stock, those who are actually astute enough or lucky enough to anticipate the ups and downs of the market can obtain greater profits with a given outlay of capital invested in the warrants than from speculating in the stock.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ARNOLD RAUM,
Acting Solicitor General.

ROGER S. FOSTER,
General Counsel,
Securities and Exchange Commission.

JULY, 1950

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